IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 9, 2007 Session

JOHN WESLEY GREEN v. EDNA L. GREEN ET AL.

Appeal from the Chancery Court for Davidson County
No. 052817-II Carol McCoy, Chancellor

No. M2006-02119-COA-R3-CV - Filed March 5, 2008

This case, a dispute over control of a closely-held corporation, presents an issue of first impression under the Tennessee Securities Act of 1980: whether reliance is an element of a cause of action pursuant to T.C.A. § 48-2-122(b)(1). The plaintiff, a shareholder and director of the corporation, brought a declaratory judgment action to enforce a contract in which the defendant, the plaintiff's mother, agreed to sell her shares in the corporation to him. The defendant sought to rescind the contract. The corporation intervened, seeking to recover funds that the plaintiff had allegedly misappropriated from the corporation. The plaintiff's counterclaim against the corporation was dismissed for failure to state a claim upon which relief could be granted. The Chancellor granted summary judgment in favor of the defendant with respect to the declaratory judgment action and granted summary judgment in favor of the corporation with respect to its complaint in intervention. We reverse and remand in part and affirm in part.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part, Reversed and Remanded in Part

ANDY D. BENNETT, J., delivered the opinion of the court, in which PATRICIA J. COTTRELL, P.J., M.S., and DON ASH, SP.J., joined.

James D. R. Roberts, Jr., and Janet L. Layman, Nashville, Tennessee, for the appellant, John Wesley Green.

Eugene N. Bulso, Jr., and Emily Reddick Walsh, Nashville, Tennessee, for the appellees, Edna L. Green and Champs-Elysees, Inc.

OPINION

The unfortunate story underlying this case features a battle for control of a closely-held corporation and the estrangement of family members. While the record in this case is voluminous, we will include here only a condensed version of the facts and proceedings below as needed to address the issues presented on appeal.

John Wesley Green founded Champs-Elysees, Incorporated, a Tennessee corporation that produces foreign language educational tools, in 1982. The original shareholders were Edna Green (Wesley Green's mother), Mark Green (Wesley Green's brother), and Arthur Fourier (not a family member). Wesley Green served as the corporation's president from October 1995 through November 2005. All of the shareholders have been employed by the corporation at various times. Edna Green, a former school teacher, retired from the corporation in 1997.

Wesley Green approached his mother in October 2005 about his desire to purchase her 22,000 shares in the company. These additional shares would have given Mr. Green a majority interest in the company. As set forth in his complaint, Mr. Green gave Ms. Green three reasons why the sale would benefit her and the company:

a. Her personal finances would be improved by a cash payment;

b. The bank would remove Edna L. Green as a guarantor on a substantial line of credit; and

c. Obtaining a majority interest of the stock in the company would enable Plaintiff [Wesley Green] to raise capital necessary to improve the overall condition of the company.

While she was initially reluctant, Ms. Green ultimately told Mr. Green, after several conversations over a period of days, that she would sell her shares to him. Mr. Green had his attorney draft a bill of sale, which Ms. Green signed on October 27, 2005. The terms of the bill of sale provided that Ms. Green transfer and convey her stock in Champs-Elysees to Mr. Green for the sum of $8,000. Mr. Green was to make an initial payment of $2,000 upon execution of the contract and monthly payments of $1,000 beginning in January 2006 until paid in full. In the event that the company was sold or Mr. Green sold these shares within two years of the last payment, Ms. Green was to receive 50% of the net profit from the sale. Mr. Green gave Ms. Green a check for $2,000 in accordance with the bill of sale.

Ms. Green talked to another son, Mark Green, later that day about the stock sale, and he was upset about it. The next day, October 28, 2005, Ms. Green gave Wesley Green a note stating that she wished to rescind the sale; and she attempted to return the $2,000 check to him. Wesley Green refused to accept the rescission.

At a board meeting on November 11, 2005, the Champs-Elysees board of directors removed Wesley Green as president.

On November 14, 2005, Wesley Green filed a declaratory judgment action against Edna Green, Mark Green, and Arthur Fourier in the chancery court requesting that the court declare the stock sale contract valid and enforceable. In conjunction with his complaint, Mr. Green filed motions for restraining orders to prevent Champs-Elysees from issuing or selling treasury stock and to prevent Ms. Green from transferring the disputed stock. After a hearing on November 22, 2005, the court denied Mr. Green's request for restraining orders in an order dated December 1, 2006.

On January 9, 2006, there was a hearing on a motion to dismiss and motion for protective order filed by Ms. Green asserting that an action for damages based on the same incidents had been filed by Mr. Green in the circuit court. The court denied these motions. Another hearing was held on February 10, 2006 on Mr. Green's motion to alter or amend the December 1, 2006 order on the grounds that it did not accurately reflect the court's findings. The court denied the motion to alter or amend.

Ms. Green filed an answer to the declaratory judgment complaint on April 10, 2006. A few days later, Champs-Elysees moved the court to allow it to intervene; the court granted the motion. In its complaint in intervention, Champs-Elysees alleged that Wesley Green had misappropriated more than $54,000 from the company since November 2004 and sought compensatory and punitive damages. Wesley Green answered that the funds in question were paid to him with the consent and approval of Mark Green and Arthur Fourier. Wesley Green also filed a "countercomplaint" against Champs-Elysees and its directors for tortious interference with contract, civil conspiracy, failure to honor stock contract, wrongful removal as a corporate director and officer, unpaid wages, failure to pay stock distributions to all shareholders, inappropriate distributions in violation of T.C.A. §48-16-401, slander and libel, failure to produce and send form 1099-Misc for income received, misuse of corporate treasury stock, and fraud. Ms. Green and Champs-Elysees moved to dismiss Wesley Green's "countercomplaint." In his response to the motion to dismiss, Wesley Green included a request (but not a formal motion) for permission to file an amended complaint. At a hearing on May 5, 2006, the trial court granted the motion to dismiss on the basis that Mr. Green's countercomplaint did not state any claims upon which relief could be granted.

In the meantime, Wesley Green, Edna Green, Mark Green, and Arthur Fourier were all being deposed. On May 11, 2006, Ms. Green and Champs-Elysees filed a motion for summary judgment with supporting documents regarding the declaratory judgment action and the company's claim for misappropriation of funds. On May 12, 2006, Mr. Green filed a motion for interlocutory appeal (based upon the order that had been lodged regarding the May 5, 2006 hearing) and a motion for recusal. Mr. Green's motions for an interlocutory appeal and recusal were denied in an order dated June 6, 2006.

After a hearing on July 14, 2006, the trial court entered an order on July 21, 2006 granting the motion for summary judgment of Ms. Green and Champs-Elysees. The court declared the bill of sale "invalid and unenforceable" and found that Wesley Green had violated the Tennessee Securities Act of 1980 in connection with the sale of stock. The court further awarded judgment against Wesley Green in favor of Champs-Elysees for $46,600. Wesley Green filed a motion to alter or amend the final order, a motion for leave to file an amended complaint, and a motion for judgment on a prior motion to compel the deposition of Ms. Green, all of which were denied by the court in an order dated September 22, 2006. Mr. Green filed a notice of appeal on September 15, 2006.

On appeal, Mr. Green has presented numerous issues for review. He challenges the trial court's decision to grant Ms. Green's motion for summary judgment and rescind the stock sale pursuant to T.C.A. § 48-2-122(b)(1) as well as the trial court's decision to grant summary judgment

on the corporation's claim of misappropriation of company funds. Mr. Green further asserts that the trial court erred in allowing Champs-Elysees to intervene, in dismissing Mr. Green's counterclaim and in denying permission for him to amend his complaint, and in making several other rulings– denying Mr. Green's motion for recusal and motions for restraining orders, and granting a motion for protective limitations upon the deposition of Ms. Green.

ANALYSIS

I.

Tennessee Securities Act

The trial court granted summary judgment in favor of Ms. Green on the declaratory judgment action regarding the validity of the stock sale. Summary judgments do not enjoy a presumption of correctness on appeal. *BellSouth Adver. & Pub. Co. v. Johnson*, 100 S.W.3d 202 (Tenn. 2003). This court must make a fresh determination that the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Hunter v. Brown*, 955 S.W.2d 49 (Tenn. 1997). We consider the evidence in the light most favorable to the non-moving party and resolve all inferences in that party's favor. *Godfrey v. Ruiz*, 90 S.W.3d 692, 695 (Tenn. 2002). When reviewing the evidence, we must determine whether factual disputes exist. If a factual dispute exists, we must determine whether the fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. *Byrd v. Hall*, 847 S.W.2d 208 (Tenn. 1993); *Rutherford v. Polar Tank Trailer, Inc*., 978 S.W.2d 102 (Tenn. Ct. App. 1998).

In granting Ms. Green's motion for summary judgment, the trial court decided that Mr. Green had violated T.C.A. § 48-2-121(a)(2) and that Ms. Green was therefore entitled to rescission pursuant to T.C.A. § 48-2-122(b)(1). Both of these provisions are part of the Tennessee Securities Act of 1980. T.C.A. § 48-2-121(a) provides:

> It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to:
>
> > (1) Employ any device, scheme, or artifice to defraud;
> > (2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
> >
> > (3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

In this case, Mr. Green is alleged to have violated subsection (a)(2) regarding making an untrue statement of material fact. T.C.A. § 48-2-121(a)(2) defines the violation at issue here, but the remedy is found in T.C.A. § 48-2-122, which addresses civil liability for violations of the Tennessee Securities Act. T.C.A.§ 48-2-122 (a) deals with violations by sellers; subsection (b) deals with violations by purchasers. T.C.A. § 48-2-122(b)(1) provides:

> Any person who purchases a security in violation of § 48-2-121(a) (the seller not knowing of the violation of § 48-2-121(a), and who does not carry the burden of proof of showing that the purchaser did not know and in the exercise of reasonable care could not have known of the violation of § 48-2-121(a)) shall be liable to the person selling the security to the purchaser to return the security, plus any income received by the purchaser thereon, upon tender of the consideration received, or, if the purchaser no longer owns the security, the excess of the value of the security when the purchaser no longer owns the security, the excess of the value of the security when the purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security.

Mr. Green challenges the trial court's ruling under T.C.A. §§ 48-2-121 and 48-2-122 on several grounds. Mr. Green argues that (1) there was no misrepresentation as he was operating under a unilateral mistake, (2) any misinformation did not involve a material fact, and (3) Ms. Green did not rely upon the alleged misinformation.

Mr. Green's alleged violation of these provisions hinges upon his statement to Ms. Green that, if she sold her shares to him, the bank would remove her as a guarantor on the company's line of credit. It appears from the record that Ms. Green was not, in fact, a guarantor. Mr. Green asserts, however, that he had assumed Ms. Green was on the guaranty since he had been informed by the bank that anyone with more than 20% ownership in a company was required to sign a guaranty. Furthermore, Mr. Green asserts that, since the company had been administratively dissolved during part of the relevant time period, it was his understanding that the company was functioning as a partnership and that the bank would require all partners to be guarantors of the company's debts. Taken in the light most favorable to Mr. Green, the non-moving party for purposes of Rule 56, the evidence indicates that Mr. Green was acting under the erroneous notion that his mother was a guarantor.

The most compelling argument offered by Mr. Green in support of his position is that Ms. Green failed to establish that she had relied upon the alleged untrue facts or misrepresentations he made to her. Ms. Green responds that reliance is not a necessary element of a claim under T.C.A. § 48-2-122(b)(1). Ms. Green does not argue on appeal that she relied on Mr. Green's statement, but asserts that she was unsure as to her exposure on the line of credit. Ms. Green stated in her affidavit that she was not a guarantor of the company's debt. She also stated: "I did not think that I was obligated on any loan by the bank to the Company, but I considered and relied upon Wes Green's representation in signing [the stock sale contract]." There is a factual dispute on the issue of reliance, and we must therefore determine whether reliance is a required element under T.C.A. § 48-2-122(b)(1).

We conclude, for the reasons outlined below, that reliance is required for a cause of action under T.C.A. § 48-2-122(b)(1).

While the necessity of a seller's reliance under T.C.A. § 48-2-122(b)(1)[1] has never been addressed by Tennessee's appellate courts, there are several decisions that offer guidance as to the proper interpretation of this provision. The most notable decision is *Constantine v. Miller Indus., Inc.*, 33 S.W.3d 809 (Tenn. Ct. App. 2000), a case involving T.C.A. § 48-2-122(c)(1). Subsection (c)(1) of T.C.A. § 48-2-122 states that, "Any person who willfully engages in any act or conduct which violates § 48-2-121 shall be liable" under certain circumstances for damages to any person "who purchases or sells any security at a price which was affected by the act or conduct . . . ." In *Constantine*, a case involving a public stock offering, the plaintiffs' suit was dismissed for failure to state a claim upon which relief could be granted. The dispositive issue on appeal was whether reliance upon the alleged conduct of the defendant-sellers was required to recover under T.C.A. § 48-2-122(c). In interpreting T.C.A. § 48-2-122(c), the court stated that this subsection "does not create a new and independent cause of action, but instead merely establishes standing to bring a private cause of action for violation of T.C.A. § 48-2-121." *Constantine*, 33 S.W.3d at 812. Therefore, the court reasoned, "Without a violation of T.C.A. § 48-2-121, there is no cause of action to be brought under T.C.A. § 48-2-122(c)." *Id.*

The court in *Constantine* went on to discuss *Diversified Equities, Inc. v. Warren*, 567 S.W.2d 171 (Tenn. Ct. App. 1976), *overruled on other grounds by V.L. Nicholson Co. v. Transcon Inv. & Fin. Ltd., Inc.*, 595 S.W.2d 474 (Tenn. 1980), a case interpreting the predecessor statutes to T.C.A. §§ 48-2-121 and 48-2-122. Finding the language of T.C.A. § 48-1644 (the predecessor to T.C.A. § 48-2-121) to be similar to Rule 10b-5 of the federal securities regulations,[2] the court in *Diversified Equities* followed the federal case law and held that "reliance is an element of fraudulent practice under T.C.A. § 48-1644." *Diversified Equities*, 595 S.W.2d at 174. The *Constantine* court found that "the language of the Tennessee Securities Act of 1980 continues to closely follow federal securities law Rule 10b-5." *Constantine*, 33 S.W.3d at 813 (citing *Ockerman v. May Zima & Co.*, 27 F.3d 1151, 1155 (6th Cir. 1994)). Noting that the holding in *Diversified Equities* had been the law in Tennessee for four years when the Tennessee Securities Act of 1980 was enacted and citing the principle that the legislature is presumed "'to know the state of the law at the time it passes legislation,'" the court held that "actual reliance continues to be a requirement for maintaining a

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[1]The legislative histories of T.C.A. §§ 48-2-121 and 48-2-122 and their predecessor statutes provide no guidance on the question of whether reliance is a required element to prove liability.

[2]Rule 10b-5 provides:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
>
> (a) To employ any device, scheme, or artifice to defraud,
>
> (b) To make any untrue statement or a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or
>
> (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,
>
> in connection with the sale or purchase of any security.

17 C.F.R. § 240.10b-5.

private cause of action under T.C.A. § 48-2-122(c) for a violation of T.C.A. § 48-2-121." *Constantine*, 33 S.W.3d at 814 (quoting *Wilson v. Johnson County*, 879 S.W.2d 807, 810 (Tenn. 1994)).

We believe the court's reasoning in *Constantine* applies to the present case and leads to the conclusion that reliance is likewise required for a cause of action under T.C.A. § 48-2-122(b)(1). Subsection (b)(1), like subsection (c)(1), provides a remedy for a violation of T.C.A. § 48-2-121, which has been interpreted by analogy to Rule 10b-5 to require reliance. Ms. Green and Champs-Elysees argue that T.C.A. § 48-2-122(a)(1) and (2) are equivalent to a federal cause of action under Section 12(2) of the Securities Act of 1933[3] (rather than under Section 10(b) of the Securities Act of 1934, pursuant to which Rule 10b-5 was promulgated). We find, however, that the language of T.C.A. § 48-2-122(a) does not closely track that of Section 12(2) and, by its terms, expressly refers back to a violation of T.C.A. § 48-2-121, which tracks almost exactly the language of Rule 10b-5. Moreover, Section 12(2) of the Securities Act of 1933 applies only to those who offer and sell securities, holding them to a high level of responsibility with respect to prospectuses or oral communications used in the sale of securities.[4] *See* 15 U.S.C.A. § 77l.

There are cases in other jurisdictions interpreting the security acts of other states in accordance with Section 12(2) of the Securities Act of 1933 and holding that those statutes do not require proof of reliance. These cases, however, involve statutes that contain language similar to Section 12(2) and that have been deemed to be analogous to Section 12(2). *See Marram v. Kobrick*

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[3]Section 12(2) of the Securities Act of 1933 is codified at 15 U.S.C.A. § 77l, which provides, in pertinent part:

> Any person who –
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> . . .
>
> (2) offers or sells a security (whether or not exempted by the provisions of section 77c of this title, other than paragraphs (2) and (14) of subsection (a) of said section), by the use of any means or instruments of transportation or communication in interstate commerce or of the mails, by means of a prospectus or oral communication, which includes an untrue statement of material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission,
>
> shall be liable, subject to subsection (b) of this section, to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon, less the amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

15 U.S.C.A. § 77l(a).

[4]Ms. Green and Champs-Elysees also make reference to the Uniform Securities Act. Although the legislative history of the Tennessee Securities Act of 1980 includes statements indicating that the Tennessee act is substantially similar to the Uniform Securities Act, Tennessee has not expressly adopted the uniform act. Moreover, some states that have modeled their securities acts partly upon a version of the Uniform Securities Act (1956, 1985, or 2002) have made modifications that require reliance for civil liability. *See* 12A AM.JUR.2D *Blue Sky Laws* §§ 9:117.21, 9:117.27 (2007) (citing statutes in Washington, Georgia, and Tennessee).

Offshore Fund, Ltd., 809 N.E.2d 1017 (Mass. 2004); *MidAmerica Fed. Sav. and Loan Ass'n v., Shearson/Am. Express, Inc.*, 886 F.2d 1249 (10th Cir. 1989) (interpreting Oklahoma Securities Act); *Everts v. Holtmann*, 667 P.2d 1028 (Or. Ct. App. 1983); *Kelsey v. Nagy*, 410 N.E.2d 1333 (Ind. Ct. App. 1980). In states with statutes tracking Rule 10b-5, reliance has been held to be required. *See Brown v. Earthboard Sports USA, Inc.*, 481 F.3d 901 (6th Cir. 2007) (interpeting Kentucky's Blue Sky law); *Keogler v. Krasnoff*, 601 S.E.2d 788 (Ga. Ct. App. 2004); *Guarino v. Interactive Objects, Inc.,* 86 P.3d 1175 (Wash. Ct. App. 2004); *Carney v. Mantuano*, 554 N.W.2d 854 (Wis. Ct. App. 1996). The Washington State Securities Act contains provisions almost identical to both T.C.A. §§ 48-2-121 and 48-2-122, and these provisions have been interpreted to require reliance. *See Guarino*, 86 P.3d at 1182; *Guarino v. Interactive Objects, Inc.*, No. 57597, 2007 WL 664878 (Wash. Ct. App. March 5, 2007).

In light of the language of the Tennessee Securities Act and the caselaw interpreting it, we hold that reliance is required for a cause of action pursuant to T.C.A. § 48-2-122(b)(1). The Chancellor's decision to grant summary judgment in favor of Ms. Green was, therefore, erroneous. Ms. Green was not entitled to judgment as a matter of law because there is a factual dispute on the issue of reliance, an element necessary to make out a cause of action under T.C.A. § 48-2-122(b)(1).

II.

Intervention by Champs-Elysees

Mr. Green assigns error to the Chancellor's ruling allowing Champs-Elysees, Inc. to intervene in order to file its misappropriation claim against him.

Tenn. R. Civ. P. 24.02 allows a court to permit intervention "(1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common." Permissive intervention is a matter of discretion on the part of the trial court. *Mfrs. Consolidation Serv., Inc. v. Rodell*, 42 S.W.3d 846 (Tenn. Ct. App. 2000). Thus, the trial court's decision will not be overturned absent an abuse of discretion. *Id.* at 861. The Tennessee Supreme Court has stated that, "A trial court abuses its discretion when it applies an incorrect legal standard or reaches a decision which is against logic or reasoning and which causes an injustice to the complaining party." *Doe 1 ex rel. Doe 1 v. Roman Catholic Diocese of Nashville*, 154 S.W.3d 22, 42 (Tenn. 2005).

In her answer, Ms. Green asserted the following defense: "The plaintiff induced the defendant to sign the Bill of Sale by concealing the fact that he had misappropriated approximately $50,000 of the Company's funds over the past year." This allegation indicates that there is a possible factual connection between Mr. Green's declaratory judgment action and the company's claim of misappropriation. We see no basis for concluding that the Chancellor abused her discretion in allowing the company to intervene. There is no indication that the company's intervention prejudiced Mr. Green in the pursuit of his claim against Ms. Green.

III.

Claim for misappropriation of funds

The Chancellor granted summary judgment to Champs-Elysees on its claim in intervention for the alleged misappropriation of company moneys by Mr. Green.

Champs-Elysees alleges that Mr. Green improperly wrote checks to himself or to cash out of a company account in the amount of $46,600. Mr. Green admits that he wrote checks to himself out of the company account, but alleges that he was specifically authorized by Mark Green (company treasurer) and/or Arthur Fourier to make these payments to himself in order to reimburse Mr. Green and his wife, Dianne Green (also a company employee) for a discrepancy between her salary and the amount actually paid to her over several years. Her salary during this period actually represented the amount of her previous salary plus the amount of Mr. Green's previous salary. Mr. Green alleges that, upon returning to the company after a period of absence, he agreed for the amount of his previous salary to be paid to his wife in order to resolve a dispute she had with the company concerning a proposed reduction in her pay. Champs-Elysees' position is that, even if there was an agreement to combine the two salaries and repay Dianne Green, the company's obligation to Dianne Green did not give Mr. Green the authority to write checks to himself instead of directly to Dianne Green.

This Court concludes that a genuine issue of material fact exists in this case concerning whether Mr. Green was authorized by the company to write the checks in question. If he was authorized to write the checks, the claim of misappropriation would fail. Thus, the Chancellor erred in granting summary judgment to Champs-Elysees on the misappropriation claim.

IV.

Mr. Green's counterclaim and motion to amend complaint

Mr. Green's initial declaratory judgment action was against Edna Green, Mark Green, and Arthur Fournier, individually and as members of the board of directors of Champs-Elysees. Champs-Elysees was granted permission to intervene and filed a complaint in intervention against Mr. Green. Mr. Green answered the complaint in intervention and then asserted a counterclaim against Champs-Elysees and its directors, setting out eleven different grounds for relief. Ms. Green and Champs-Elysees filed a motion to dismiss, arguing that Mr. Green's countercomplaint failed to state a claim upon which relief could be granted. In his response to this motion, Mr. Green asked the court to accept his counterclaims or allow him to file an amended complaint. After a hearing, the court granted the motion to dismiss and dismissed Mr. Green's countercomplaint with prejudice. After the court granted the motions for summary judgment (discussed above), Mr. Green filed a motion to alter or amend and a motion for leave to file an amended complaint. The trial court denied both motions.

On appeal, Mr. Green argues that the trial court erred in dismissing his countercomplaint and in denying his motion to file an amended complaint. For the reasons detailed below, we conclude that the trial court erred.

The crux of what happened below is that the trial court dismissed Mr. Green's countercomplaint pursuant to Tenn. R. Civ. P. 12.02 and then denied his motion to amend the complaint pursuant to Tenn. R. Civ. P. 15.01. With respect to a motion to dismiss for failure to state a claim upon which relief can be granted under Tenn. R. Civ. P. 12.02(6), we must review the trial court's decision de novo with no presumption of correctness. *Bell ex rel. Snyder v. Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A.*, 986 S.W.2d 550 (Tenn. 1999). In considering a motion under Tenn. R. Civ. P. 12.02(6), a court is to construe the complaint liberally in favor of the plaintiff "by taking all factual allegations in the complaint as true, and by giving the plaintiff the benefit of all reasonable inferences that can be drawn." *Conley v. Life Care Ctrs. of Am., Inc.*, 236 S.W.3d 713, 724 (Tenn. Ct. App. 2007). One approach to analyzing this case would be to go through all eleven claims contained in Mr. Green's countercomplaint to determine whether each alleged a cause of action.[5] Given the posture of this case, however, we decline to examine the sufficiency of the original countercomplaint with respect to all eleven claims. Even assuming the propriety of the ruling on the sufficiency of the countercomplaint, we have determined that the trial court erred in denying Mr. Green the opportunity to amend his complaint.

A trial court's decision on a motion to amend a pleading under Tenn. R . Civ. P. 15 is reviewed under an abuse of discretion standard. *Id.* at 723; *Fann v. City of Fairview, Tenn.*, 905 S.W.2d 167 (Tenn. Ct. App. 1994). Tenn. R. Civ. P. 15.01 provides that leave of court to amend pleadings "shall be freely given when justice so requires." The Tennessee Supreme Court has recognized that the language of Tenn. R. Civ. P. 15.01 "substantially lessens the exercise of pre-trial discretion on the part of a trial judge." *Branch v. Warren*, 527 S.W.2d 89, 91 (Tenn. 1975); *see also Hardcastle v. Harris*, 170 S.W.3d 67, 80-81 (Tenn. Ct. App. 2004). In considering a motion to amend, a trial court is to consider several factors, including "undue delay in filing the amendment, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and the futility of the amendment." *Gardiner v. Word*, 731 S.W.2d 889, 891-92 (Tenn. 1987). When, however, the legal sufficiency of the complaint is at issue–"instead of delay, prejudice, bad faith or futility–the better protocol is to grant the motion to amend the pleading, which will afford the adversary the opportunity to test the legal sufficiency of the amended pleading by way of a Tenn. R. Civ. P. 12.02(6) Motion to Dismiss." *Conley*, 236 S.W.3d at 24. *See also Lester v. Walker*, 907 S.W.2d 812 (Tenn. Ct. App. 1995); *Richland Country Club, Inc. v. CRC Equities, Inc.*, 832 S.W.2d 554 (Tenn. Ct. App. 1991). Thus, this court has stated that "when the court grants a motion to dismiss for failure to state a claim, only extraordinary circumstances would prohibit the plaintiff from exercising the right to amend its complaint." *Richland*, 832 S.W.2d at 559; *see also Freeman Indus. LLC v. Eastman Chem. Co*, 227 S.W.3d 561, 566-67 (Tenn. Ct. App. 2006).

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[5] It may be that the trial court improperly dismissed some of the claims. The Chancellor's reasoning with respect to the slander and libel claims indicates only that there was no claim asserted against the corporation for liability for the acts of individual directors. This flaw would not, however, rule out the existence of claims against the directors individually. At the hearing on their motion to dismiss the counterclaims, counsel for Ms. Green and Champs-Elysees acknowledged that Mr. Green may have asserted a claim against the individuals. At least some of the deficiencies identified by the Chancellor (such as a failure to request relief) may well have been subject to correction in an amended pleading.

We find no extraordinary reasons to justify the trial court's denial of Wesley Green's motion for leave to file an amended complaint. On remand, the Chancellor shall allow Mr. Green to file an amended complaint.[6]

V.

Motions for recusal, temporary injunction, deposition protections

Mr. Green has assigned error to the trial court's denial of his motions for recusal and temporary injunctive relief and to the trial court's granting Ms. Green's motion for protective limitations on her depositions. The trial court's rulings on all of these motions are subject to review under an abuse of discretion standard. *See Bailey v. Champion Window Co. Tri-Cities, LLC*, 236 S.W.3d 168 (Tenn. Ct. App. 2007); *Riley v. Whybrew*, 185 S.W.3d 393 (Tenn. Ct. App. 2005); *Ass'n of Owners of Regency Park Condos.*, 878 S.W.2d 560 (Tenn. Ct. App. 1994). Mr. Green has not put forth any specific arguments to support a determination that the Chancellor abused her discretion with respect to any of these motions. We conclude that the Chancellor properly exercised her discretion in making these rulings.

VI.

Conclusion

The trial court's granting of summary judgment with respect to the declaratory judgment action and the complaint in intervention is hereby reversed. The trial court's decision to deny Mr. Green's motion to file an amended complaint is likewise reversed. In all other respects, the rulings of the trial court are affirmed.

Costs of appeal are assessed against the appellees, for which execution may issue if necessary.

ANDY D. BENNETT, JUDGE

[6] Ms. Green and Champs-Elysees have also argued, as they did below, that Mr. Green's "countercomplaint" was improperly filed as a countercomplaint pursuant to Tenn. R. Civ. P. 14, whereas it should properly have been filed pursuant to Tenn. R. Civ. P. 15, 18, and 20. We agree with the trial court's approach of looking beyond semantics. Such irregularities can be rectified with amended pleadings.